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DECISION
of 27 May 2003

Case Number: T 0029/02 - 3.2.4

Application Number: 94200147.0

Publication Number: 0608943

IPC: A01K 1/00

Language of the proceedings: EN

Title of invention:

A construction for automatically milking animals

Patentee:

MAASLAND N.V.

Opponents:

Alfa Laval Agri AB
Prolion B.V.

Headword:

Path/MAASLAND

Relevant legal provisions:

EPC Art. 100(c), 123
EPC R. 71(2)

Keyword:

"Amendments extending beyond the content of the application as filed"

Decisions cited:

-

Catchword:

-



Case Number: T 0029/02 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 27 May 2003

Appellant: MAASLAND N.V.
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted 3 December 2001
revoking European patent No. 0608943 pursuant
to Article 102(1) EPC.**

Composition of the Board:

Chairman: C. A. J. Andries
Members: P. Petti
M. B. Tardo-Dino

Summary of Facts and Submissions

- I. The European patent No. 608 943, against which two oppositions (based *inter alia* upon Article 100(c) EPC) were filed, was revoked by the decision of the opposition division dispatched on 3 December 2001.
- II. On 24 December 2001 the proprietor of the patent (hereinafter appellant) lodged an appeal against this decision and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 3 April 2002.
- III. Oral proceedings were held on 27 May 2003.

During the oral proceedings the appellant filed an amended Claim 1 (hereinafter referred to as the "present Claim 1") which reads as follows:

- "1. A construction for automatically milking groups of animals, such as cows, which is constituted by an enclosed area consisting of a shed (2) and at least one path (12, 43) and a number of pastures (35 - 42) which are being arranged to accommodate separate groups of animals and in that each group of animals can move freely in the pasture (35 - 42) in which it is accommodated and in that the shed further comprising a milking robot area (2) with a milking robot and the at least one path (12, 43) arranged between the milking robot area (2) and said pastures (35 - 42) and in that the pastures (35 - 42) and the milking robot area are via computer-controlled doors (13; 18 - 21) into connection with said path and whereby the doors

are opened in such a way, that each group of animals can pass from a respective pasture (35 - 42) via the path (12, 43) to two meeting points (14, 15) of the shed (1) in front of the milking robot area (2) and from there to the milking robot area (2) located in said shed (1) for the purpose of being milked there and after being milked the computer controlled doors (13, 18 - 21), which are in connection with said path (12, 43) are operated in such a way that said group of animals can reach the respective pasture (35 - 42) via the path (12, 43) along or through the resting areas (4' - 11')."

Opponent II, who had been duly summoned to oral proceedings, did not appear. As provided for by Rule 71(2) EPC the proceedings continued without this party.

- IV. The appellant requested that the impugned decision be set aside and the patent be maintained on the basis of the present Claim 1.

Opponent I (hereinafter respondent I), as well as opponent II in its written submissions, requested that the appeal be dismissed.

- V. The appellant argued that the present Claim 1 did not contravene the requirements of Articles 100(c) and 123 EPC and complied with the requirements of Article 84 EPC.

Respondent I argued that the present Claim 1 contravened the requirements of Articles 84 and 123 EPC

and that the ground for opposition mentioned in Article 100(c) EPC prejudiced the maintenance of the patent on the basis of this claim. Respondent I also requested that the amendments filed by the appellant during the oral proceedings be considered inadmissible as late filed.

Reasons for the decision

1. The appeal is admissible.

2. *Admissibility of the amendments*

2.1 With respect to the respondent's request to consider the amendments inadmissible as late filed, the board notes that these amendments were filed by the appellant in order to overcome objections made by the respondent based on a ground for opposition. In the present case, the board admitted these amendments because they were such that the board itself and the respondent could consider them in a simple and efficient way without detriment to the rights of the parties.

2.2 The present Claim 1 differs from Claim 1 of the patent as granted *inter alia* in that the features that

"the doors are opened in such a way that each group of animals can pass from a respective pasture (35-42) via the path (12, 43) to two meeting points (14, 15) of the shed (1) in front of the milking robot area (2) and from there to the milking robot area (2) located in said shed (1) for the purpose of being milked there" (hereinafter referred to as "feature A")

and

"after being milked the computer controlled doors (13, 18-21) which are in connection with said path (12, 43) are operated in such a way that said group of animals can reach the respective pasture (35-42) via the path (12, 43) along or through the resting areas (4'-11')" (hereinafter referred to as "feature B")

have replaced, respectively, the features in Claim 1 of the patent as granted according to which

"the doors are opened in such a way that the animals can pass from a respective pasture via said path (12, 43) to the milking robot area (2) for the purpose of being milked" (hereinafter referred to as "feature A^{PAG}")

and

"[the doors are opened in such a way that the animals can pass] ... from the milking robot area via said path (12, 43) to the respective pasture" (hereinafter referred to as "feature B^{PAG}").

2.2.1 The appellant argued that feature B can be derived from claim 23 of the application as filed (hereinafter referred to as the "AAF").

2.2.2 In this respect, respondent I essentially argued as follows:

- (i) Claim 23 of the "AAF" refers to the connection between the pasture and **the space** (1), ie the shed. Therefore, this claim of the "AAF" cannot represent a basis for feature B in so far as this feature refers to the connection between the pastures and **the milking robot area**.

- (ii) According to the description and the drawings of the application as filed, the computer controlled doors of the construction are controlled in such a way that after milking the animals of a group can pass from the milking robot area via the meeting point 16 to the feeding station where they are provided with fodder and from the feeding station via the meeting point 17 to the path and from the path via the resting area intended for the group to the respective pasture.

- (iii) Feature B defines the operation of the computer controlled doors at a higher level of generalisation without there being a basis for this intermediate generalisation in the "AAF".

2.3 Feature B refers to the term "path" in so far as it defines the operating mode of computer controlled doors "which are in connection with the **path** (12, 43)" (emphasis added), ie which are located - according to a previous feature of the present Claim 1 - between the milking robot area and the path as well as between the path and the pastures. In the context of Claim 1, the "path (12, 43)" has to be understood as being a physical entity, ie as a passageway for the animals. Moreover, feature B implicitly defines an "abstract" path of the animals of a group, ie the continuous

series of positions which an animal of each group can assume during the return travel between "the milking robot area" and "the respective pasture".

It can be clearly understood from the portion of the description of the "AAF" referring to Figures 1 to 8 (page 2, line 34 to page 7, line 20) and disclosing the shed (1) referred to in the present Claim 1 that the shed (1) is provided with computer controlled doors (13, 18, 19) which are operated in such a way that the animals of a group pass from the milking robot area (2) via the meeting point (16) to the feeding station (3) and from there via the meeting point (17) and path or passage (12) to the respective resting area (4 to 11). Moreover, it can be understood from the portion of the description of the "AAF" referring to Figure 9 (page 7, line 21 to page 8, line 9) and disclosing the combination of the shed (1) with a plurality of pastures or pasture sections (35 to 42) that there is a further path or passage (43) and a plurality of resting areas (4' to 6', 7, 8 and 9' to 11'), each resting area being associated with a pasture or pasture section (35 to 42) and that there are doors which are controlled in the same manner as described referring to Figures 1 to 8, ie in such a way that the animals of a group pass from the milking robot area (2) via the meeting point (16) to the feeding station (3), from there via the meeting point (17) and the path or passage (12 and/or 43) to the respective resting area (4' to 6', 7, 8 and 9' to 11') and from there to the respective pasture or pasture section (35 to 42). In other words, the description of the embodiment according to Figure 9 defines for each group of animals a specific "abstract" return-path which goes from the milking robot area (2)

through the meeting point (16), the feeding station (3), the meeting point (17), the path or passage (12 and/or 43), a respective resting area (4' to 6', 7, 8 and 9' to 11') and from there to the respective pasture (35 to 42).

Having regard to its wording, feature B implicitly defines a more general "abstract" return-path for each group of animals, which for instance also encompasses a return-path along which the animals of a group, after having been milked in the milking robot area, can return from the milking robot area to the respective pasture "via the path [ie via the passageway] (12, 43) along or through the resting areas (4'-11')" without entering the feeding station.

The introductory portion of the description (page 1, line 1 to page 2, line 20) of the "AAF" neither refers to the operating mode of the computer controlled doors nor defines an "abstract" return-path as defined by feature B.

Claim 23 of the "AAF" defines an "abstract" return-path of the animals **from the shed** (ie from the "space (1)") to the pasture "via the path (43) along or through the resting areas (4' - 11')", without referring to computer controlled doors or to the milking robot area. Thus, this claim does not provide a basis for the disclosure of an "abstract" return path of the animals of a group **from the area in which the animals have been milked** to the respective pasture as defined by feature B.

It has to be noted that Claim 22 of the "AAF" refers to an "abstract" return path of a group of animals from the milking robot according to which the animals proceed to "the resting area (4-11, 4'-11') intended for them" not only after "having been milked" but also after "having been provided with fodder".

Thus, the "abstract" return-path of each group of animals which is implicitly defined by feature B is more general than the "abstract" return-path disclosed either in the description or in Claim 22 of the "AAF".

Therefore, feature B represents the generalisation of specific features disclosed in the detailed description of the "AAF" without there being a basis in the "AAF" for such a generalisation.

2.4 Moreover, according to feature B the doors are operated in such a way that each group of animals "can reach the respective pasture (35-42) ... through the resting **areas** (4'-11')" (emphasis added), without there being a previous definition of the resting areas. In other words, since the present Claim 1 refers to "resting areas" without indicating the relationship of the resting areas to the groups of animals and/or to the pastures, it can be interpreted as encompassing also a construction in which the doors are operated in such a way that each group of animals can pass from the milking robot area to the respective pasture via more resting areas.

This possible interpretation of feature B would be inconsistent with the description of the "AAF" according to which each pasture is associated with a

corresponding resting area, wherein the animals of a group after having been milked and having been provided with fodder proceed through the respective resting area (4' to 6', 7 , 8 or 9' to 11') to the respective pasture (35 to 42).

2.5 Furthermore, it has to be noted that feature A which *inter alia* defines the "abstract" path of the animals of each group from the respective pasture to the milking robot area does not refer to "resting areas", while the description of the "AAF" consistently refers to a construction in which each pasture (35 to 42) is associated with a resting area (4' to 6', 7 , 8 or 9' to 11') in such a manner that the animals of each group not only can return (after having been milked and having been provided with fodder) to the respective pasture via the path (12 and/or 43) and the respective resting area but also can pass from a respective pasture **via the respective resting area** and via the path to the two meeting points (14, 15) and from there to the milking robot area.

2.6 Having regard to comments above, particularly to the comments in section 2.2, the subject-matter of the present Claim 1 extends beyond the content of the "AAF". Thus, the amendments made to arrive at the present Claim 1 contravene the requirements of Article 123(2) EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

C. Andries